

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

GEORGIACARRY.ORG, INC., and) BRIAN BARRS,)) Plaintiffs,) CIVIL ACTION FILE NO.) v.) 1:14-CV-00178-JRH-BKE) U.S. ARMY CORPS OF ENGINEERS) and THOMAS J. TICKNER, in his) official capacity as Commander,) Savannah District U.S. Army Corps of) Engineers,)) Defendants.)
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**DEFENDANTS' REPLY SUPPORTING THEIR MOTION FOR AN
EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT**

Plaintiffs' brief opposing Defendants' motion for an extension of time to respond to their Complaint contains a series of assertions, accusing Defendants of improper conduct in seeking to transfer this case to another court or, in the alternative, for an extension of time. None of these assertions is accurate or appropriate. Plaintiffs have failed to identify any prejudice that they would allegedly suffer if the Court grants Defendants' motion. The motion should be denied, as set forth below.

First, Plaintiffs' opposition brief fails to identify any prejudice Plaintiffs would allegedly suffer if the Court were to grant Defendants' motion for an extension of time. Had such an extension posed any inconvenience or prejudice to Plaintiffs, they should have indicated as much when Defendants sought Plaintiffs' position on the motion for an extension. Instead, when Defendants contacted Plaintiffs in advance of filing, Plaintiffs provided no reason for their opposition, stating only: "Plaintiffs would oppose the motion(s) you describe."

Second, Plaintiffs purport to be impatient for Defendants to move to dismiss this case.

See Pl. Opp. to Def. Mot. for Extension of Time to Respond (“Pl. Opp.”) at 2-3 [ECF No. 12].

But earlier this year, Plaintiff GeorgiaCarry.Org, Inc. (“GeorgiaCarry”), together with an individual member of GeorgiaCarry, filed suit in the U.S. District Court for the Northern District of Georgia against the U.S. Army Corps of Engineers, alleging claims virtually identical to those raised here. See Mem. Supp. Def. Mot. to Transfer Case at 1-2 & Ex. 1 [ECF Nos. 7-1, 7-2].

When Defendants moved to dismiss that case, after the court denied Plaintiffs’ motion for a preliminary injunction, Plaintiffs did not respond to the motion to dismiss. Instead, four days later, Plaintiffs moved to stay all proceedings in the district court while they pursued an interlocutory appeal of the Court’s denial of a preliminary injunction motion. Pl. Mot. for Stay of Further Proceedings in this Court Pending Disposition of Appeal, GeorgiaCarry.Org v. U.S. Army Corps of Eng’rs (“GeorgiaCarry I”), No. 4:14-CV-139-HLM (attached as Ex. 1). As grounds for the motion to stay, Plaintiffs represented to the Court: “The Motion to Dismiss raises some of the issues that are on appeal at the 11th Circuit. In an effort to conserve both judicial resources and the Parties’ resources, Plaintiffs therefore move for an order to stay consideration of the Motion to Dismiss and all other proceedings in this Court until the Court of Appeals disposes of the pending appeal.” Id. at 1-2.

Plaintiffs cannot have it both ways. If, as Plaintiffs represented to the Court in GeorgiaCarry I, staying consideration of Defendants’ motion to dismiss is warranted while the Eleventh Circuit resolves their interlocutory appeal, they should not be heard to simultaneously argue in this case – alleging virtually identical claims – that “any extension” of time for Defendants to file a motion to dismiss “would cause an undue delay.” Pl. Opp. at 2. Plaintiffs’ purported urgency for this case to move forward rings hollow.

In sum, Plaintiffs have failed to identify any prejudice they would allegedly suffer if the Court grants Defendants' motion for an extension to respond until after the Court has adjudicated Defendants' motion to transfer this case. And if the Court grants Defendants' motion to transfer, such an extension will have saved this Court and the parties time and resources that would otherwise be devoted to briefing an unnecessary motion. Further, Plaintiffs have presented no reason for their about-face from GeorgiaCarry I, when they responded to Defendants' motion to dismiss by moving to stay all proceedings in that case. Accordingly, in the event that the Court denies Defendants' motion to transfer, Defendants respectfully request that the Court grant Defendants' requested extension.

Dated: November 10, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on November 10, 2014, I electronically filed the within and foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the parties' attorneys of record.

This 10th day of November, 2014.

/s/ Daniel Riess
Daniel Riess